



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Dylan Maresca,
Fire Fighter (M2554M),
City of Newark

CSC Docket No. 2014-1997

List Removal Appeal

ISSUED: ~~AUG~~ 15 2014 (DASV)

Dylan Maresca appeals the attached decision of the Division of Classification and Personnel Management (CPM), which upheld the removal of his name from the Fire Fighter (M2554M), City of Newark, eligible list due to his failure to meet the residency requirement.

The open-competitive examination for Fire Fighter (M2554M), City of Newark, was announced with a closing date of March 31, 2010 and was open to residents of Newark. Applicants were required to maintain continuous residency up to the date of appointment. See *N.J.A.C. 4A:4-2.11(e)1*. The appellant, a nonveteran, passed the subject examination and ranked 95th on the resulting eligible list, which promulgated on December 13, 2011 and expires on December 12, 2014.¹ The second certification of the eligible list was issued on July 23, 2012 containing the names of 126 eligibles. The appellant was listed in the 34th position on the certification. In disposing of the certification, the appointing authority requested the removal of the appellant's name due to his failure to meet the residency requirement. The appointing authority submitted a copy of the appellant's employment application where he listed his address from July 2005 to May 2010 in Atlantic Highlands, New Jersey, and from May 2010 to the present at Oliver Street in Newark. Additionally, it presented the appellant's Motor Vehicle Services Address Change History, dated March 14, 2013, indicating that as of

¹ The Fire Fighter (M2554M), City of Newark, eligible list was scheduled to expire on December 12, 2013. However, the list was extended for one year.

October 15, 2010, the appellant's mailing and residential address was in Atlantic Highlands when it was changed to a North 6th Street address in Newark. The history also reflected a change of address on March 27, 2012 to an Oliver Street address in Newark, which is listed as the appellant's "current" address. It is noted that 34 appointments, effective June 10, 2013, and one appointment, effective July 23, 2012, were made from the subject certification.

The appellant appealed to CPM, submitting copies of documentation which listed the Oliver Street, Newark, address, such as a month to month lease agreement commencing on May 1, 2010; his license issued in 2013; insurance information and a certificate of title effective 2012; a County of Essex Voter Acknowledgment Card with a registration date on his date of birth; 2011 and 2012 tax forms; his 2012 income tax return; a 2013 bank statement, a 2013 vehicle registration card; correspondence from the Social Security Administration in 2012; a letter from the United Food and Commercial Workers, Local 1262; and a car repair bill from 2012. The appellant also presented an affidavit, dated April 15, 2012, from his landlord, Omar Melo, attesting to the fact that the appellant lives at the Oliver Street address, and correspondence from the appellant's father, Albert J. Maresca, Jr., a Fire Captain with the City of Newark, requesting a meeting with the Fire Chief and Fire Director. Further, the appellant included a letter, dated May 18, 2013, from John Tracy, a "longtime family friend," stating that the appellant in March and April 2010 lived with him at his apartment in Beaumont Place, Newark, because the appellant was having problems with his new apartment on North 6th Street. However, upon review, CPM found that the appointing authority presented a sufficient basis to remove the appellant's name from the subject eligible list.

On appeal to the Civil Service Commission (Commission), the appellant asserts that the appointing authority "knowingly and wrongfully disregarded [his] rights" and removed his name from the subject eligible list under the "disguise" that he did not meet the residency requirement. However, he maintains that he resided in Newark at the time of the closing date and he remains a resident. The appellant claims that the former Fire Director, Fateem Ziyad,² refused to acknowledge the letter from Tracy "in his rush to knock off candidates in order to try to reach his son's position." It is noted that a candidate who bears the same last name as Ziyad ranked 124th on the certification and was not appointed since the candidate was not reachable for appointment. Moreover, the appellant explains that in September 2009, he was a college freshman. In January 2010, he and his two brothers³ decided

² Ziyad retired as a Deputy Fire Chief with the City of Newark effective December 31, 2013. He was the Municipal Department Head from December 13, 2010 through November 27, 2013.

³ The Commission upheld the removal of the appellant's brother, Albert J. Maresca III, a disabled veteran who ranked number one, from the May 1, 2012 certification of the subject eligible list since he failed to meet the City of Newark's residency requirement. *See In the Matter of Albert J. Maresca III* (CSC, decided August 13, 2014). The appellant's other brother, Brett Maresca, who ranked as the

to move to Newark and establish residency in order to become Fire Fighters and “follow in [their] father and grandfather’s footsteps.” His father’s co-worker, Jose Ruiz, a Fire Fighter, owned an apartment house on North 6th Street in Newark and had an oral agreement with the appellant and his brothers to rent the place upon the current tenant moving. The landlord gave the appellant a key in order for him to receive mail while he waited for the apartment to be vacant. The appellant asserts that he planned to move on March 1, 2010. However, when the tenants did not vacate the apartment, Tracy allowed him to “move into his place” on Beaumont Avenue in Newark. The appellant claims that it was where he “would sleep and eat [his] meals when [he] was not attending [his] classes.” When it was evident that the North 6th Street apartment would not be vacated, the appellant found an apartment on Oliver Street in mid-April 2010. The appellant states that he told the owner, Melo, that he would be renting the place for himself and his two brothers, who were serving with the United States Marine Corps and had been deployed until 2011.⁴ The appellant then signed a lease which commenced in May 2010. In support of his appeal, the appellant submits the above-referenced documents which bear the Oliver Street address. The appellant also submits a copy of his appeal to CPM, in which he claimed that Ziyad refused to meet with him regarding his removal from the subject eligible list. However, the appellant alleged that Ziyad “had no problem in addressing minority candidates and correcting any questions or concerns with them” and “discriminated against non-minority candidates.” Additionally, the appellant presents a letter from Ruiz, stating that he had an oral agreement to rent his apartment to the appellant and his brothers “based on the belief [he] was having an opening.” Ruiz noted that the appellant “was away attending college until May” 2010 and the apartment was supposed to be available by March 1, 2010. Additional documents which the appellant includes are the appellant’s 2011 through 2013 credit union statements, 2012 and 2013 tax forms, 2012 tax return, 2013 Driver History Abstract, 2013 credit report, and 2013 application for the Law Enforcement Examination which indicate the Oliver Street address. Therefore, the appellant requests that he “be hired immediately” with a retroactive date of appointment for salary step placement and pension purposes.

In response, the appointing authority, represented by Emily Truman, Assistant Corporation Counsel, indicates that on April 18, 2013, the appellant submitted an application for a Fire Fighter position with the City of Newark. After an investigation of the appellant’s background, it was determined that the appellant failed to meet the residency requirement. As such, he was removed from the subject eligible list. The appointing authority further explains that the investigation revealed that the appellant did not begin to reside in Newark until October 15, 2010, well after the March 31, 2010 examination closing date. The appellant was

39th veteran on the May 1, 2012 certification, was appointed as a Fire Fighter with the City of Newark effective July 23, 2012.

⁴ In his appeal to CPM, the appellant stated that his brother Albert moved out and bought a home in August 2013.

investigated by Ramon Irizarry, a Fire Fighter, who has worked for 22 years as a detective in the Newark Fire Department's Division of Investigations. The appointing authority states that Irizarry obtained the appellant's Motor Vehicle Services Address Change History, dated March 14, 2013, and determined that the appellant failed to meet the residency requirement. Accordingly, Irizarry recommended to Ziyad that the appellant's name be removed from the subject eligible list. The appointing authority submits Irizarry's certification, attesting to the foregoing and stating that he "was not pressured, forced, coerced or otherwise compelled to make the finding regarding Maresca and [he] did not treat [his] investigation of Maresca differently than any other candidate before or after."

The appointing authority also emphasizes that the appellant's residence as of March 31, 2010 was in Atlantic Highlands. It was not until October 15, 2010 when the appellant changed his address to Newark, namely to the North 6th Street address. However, the appellant admits that he never lived at the North 6th Street location. This is also verified by Tracy's letter. It is noted that the appointing authority incorrectly refers to Tracy's letter as an affidavit. Tracy's statements are not sworn. The appointing authority identifies additional "major inconsistencies" regarding the appellant's place of residence. It indicates that the documents provided by the appellant do not support that he resided in Newark as of March 31, 2010. Further, it states that, although the appellant claims that he lived with Tracy in March and April 2010, there is no motor vehicle record which supports this. Apart from Tracy's letter, there is also no lease, paystubs, or bills which show that the appellant ever lived at Beaumont Place. Additionally, the appointing authority underscores the fact that the appellant submitted his application, under oath, and there was no mention of the North 6th Street or Beaumont Place address. Rather, the appellant lists his residency from July 2005 to May 2010 as Atlantic Highlands. The appointing authority also submits the appellant's Record Verification document, which demonstrates the foregoing information. Moreover, the appointing authority states that the address change history shows the appellant residing at the Oliver Street address beginning on March 27, 2012.

Furthermore, the appointing authority argues that even if the appellant's assertions were to be considered truthful, he does not meet the residency requirement. In that regard, it states that the appellant has failed to provide information that the time spent at the Beaumont Place was more than any other location or that this address was recorded on any document to consider the appellant to be a resident of that location. The appointing authority states that, according to the appellant, he only stayed at the Beaumont Place "when I needed to come home from college" where he "would sleep and eat [his] meals when [he] was not attending classes." Thus, the appointing authority maintains that the Beaumont Place address was "transient at best." It also concludes that the appellant obtained a letter from Tracy, "a close family friend" only after the

appellant submitted his application. Accordingly, the appointing authority requests that the appellant's appeal be denied.

CONCLUSION

N.J.A.C. 4A:4-2.11(c) provides that where residence requirements have been established in local service in addition to the New Jersey State residency requirement, residence with regard to local service requirements means a single legal residence. The following standards shall be used in determining local legal residence:

1. Whether the locations in question are owned or rented;
2. Whether time actually spent in the claimed residence exceeds that of other locations;
3. Whether the relationship among those persons living in the claimed residence is closer than those with whom the individual lives elsewhere. If an individual claims a parent's residence because of separation from his or her spouse or domestic partner (see section 4 of P.L. 2003, c. 246), a court order or other evidence of separation may be requested;
4. Whether, if the residence requirement of the anticipated or actual appointment was eliminated, the individual would be likely to remain in the claimed residence;
5. Whether the residence recorded on a driver's license, motor vehicle registration, or voter registration card and other documents is the same as the claimed legal residence. Post office box numbers shall not be acceptable; and
6. Whether the school district attended by child(ren) living with the individual is the same as the claimed residence.

See e.g., In the Matter of Roslyn L. Lightfoot (MSB, decided January 12, 1993) (Use of a residence for purposes of employment need and convenience does not make it a primary legal residence when there is a second residence for which there is a greater degree of permanence and attachment). *See also, In the Matter of James W. Beadling* (MSB, decided October 4, 2006). Moreover, *N.J.A.C. 4A:4-2.11(e)1* states that unless otherwise specified, residency requirements shall be met by the announced closing date for the examination. When an appointing authority requires residency as of the date of appointment, residency must be continuously maintained from the closing date up to and including the date of appointment.

Additionally, *N.J.A.C.* 4A:4-4.7(a)7 provides that discontinuance of an eligible's residence in the jurisdiction to which an examination was limited or for a title for which continuous residence is required is a cause for disqualification from an eligible list. *N.J.A.C.* 4A:4-6.3(b), in conjunction with *N.J.A.C.* 4A:4-4.7(d), provides that the appellant has the burden of proof to show by a preponderance of the evidence that an appointing authority's decision to remove his or her name from an eligible list was in error.

In the instant matter, the appellant asserts that he lived at Beaumont Place in Newark in March and April 2010 and submits Tracy's letter in support. In May 2010, the appellant moved to the Oliver Street address. The appointing authority disputes the appellant's assertions, given the lack of documentation to support that the appellant was a resident of Newark by the March 31, 2010 examination closing date. *N.J.A.C.* 4A:4-2.11(e)1 requires the appellant to maintain continuous residency from March 31, 2010 up to and including the date of appointment. Tracy's letter is suspect given that the appellant in his employment application forms lists that he resided in Atlantic Highlands from July 2005 to May 2010. Moreover, considering the standard set forth in *N.J.A.C.* 4A:4-2.11(c), the appellant has not shown that he owned or even rented the Beaumont Place residence and the time spent at that location clearly does not exceed other locations. As emphasized by the appointing authority, the appellant states that he stayed at Beaumont Place when he was not attending his classes. Additionally, Ruiz indicates that the appellant was "away" at college until May 2010. The Beaumont Place address is also not recorded on any driver's license, motor vehicle registration, voter registration card or other documents. In fact, the appellant's Motor Vehicle Services Address Change History, dated March 14, 2013, indicated that as of October 15, 2010, the appellant's mailing and residential address was in Atlantic Highlands, when it was changed to a North 6th Street, Newark, address. The appellant did not change his address to Oliver Street until March 27, 2012, which is suspect given that the appellant states that he resided at Oliver Street and signed a lease at the location commencing on May 1, 2010. *See e.g., In the Matter of Patrick O'Hara* (CSC, decided January 13, 2010) (Commission found appellant who claimed he leased a Newark Address on April 12, 2006, but did not change his motor vehicle record until November 7, 2007 was not a resident since *N.J.S.A.* 39:3-36 requires a motorist to report an address change within one week of move). Furthermore, the documents the appellant presents reflect dates after March 31, 2010 and do not convince the Commission that he was a resident of Newark at the closing date. As indicated in *Lightfoot, supra*, use of a residence for purposes of employment need does not make it a primary legal residence. *See also, In the Matter of Chad Batiuk*, Docket No. A-5593-05T5 (App. Div. September 28, 2007) (Appellant's convoluted residency saga was less than plausible and his use of a claimed township address was found to be utilized to deceive the appointing authority).

Lastly, the appellant makes discriminatory and nepotistic claims against Ziyad. However, apart from his allegations, the appellant has not submitted any evidence to support his claims. The record indicates that Irizarry recommended the appellant's removal from subject eligible list after he determined the appellant failed to meet the residency requirement. Irizarry attests in a certification that he "was not pressured, forced, coerced or otherwise compelled to make the finding regarding Maresca and [he] did not treat [his] investigation of Maresca differently than any other candidate before or after." Furthermore, the individual who has the same last name as Ziyad on the certification was not appointed. Thus, the appellant's claims are unsupported and wholly unpersuasive.

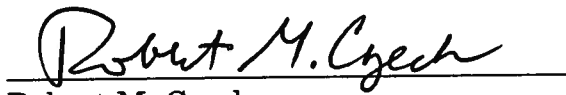
Therefore, under these circumstances, the appointing authority has presented a sufficient basis to remove the appellant's name from the Fire Fighter Fire Fighter (M2554M), City of Newark, eligible list due to his failure to meet the residency requirement. Accordingly, the appellant has failed to meet his burden of proof in this matter.

ORDER

Therefore, it is ordered that this appeal be denied.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 13TH DAY OF AUGUST, 2014


Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Henry Maurer
Director
Division of Appeals
and Regulatory Affairs
Civil Service Commission
Written Record Appeals Unit
P.O. Box 312
Trenton, New Jersey 08625-0312

Attachment

c: Dylan Maresca
Emily Truman, Assistant Corporation Counsel
Julien X. Neals
Kenneth Connolly



Chris Christie
Governor
Kim Guadagno
Lt. Governor

STATE OF NEW JERSEY
CIVIL SERVICE COMMISSION
DIVISION OF CLASSIFICATION AND PERSONNEL MANAGEMENT
P. O. Box 313
Trenton, New Jersey 08625-0313

Robert M. Czech
Chair/Chief Executive Officer

February 7, 2014

Dylan Maresca

Title: Firefighter
Symbol: M2554M
Jurisdiction: City of Newark
Certification Number: OL130280
Certification Date: 7/23/2012

Initial Determination: Removal – Outside of residency scope

This is in response to your correspondence contesting the removal of your name from the referenced eligible list.

The Appointing Authority requested removal of your name in accordance with N.J.A.C. 4A:4-2.11(e)1, which permits the removal of an eligible candidate's name from the eligible list for failure to continuously maintain residency from the closing date of the examination announcement up to and including the date of appointment.

In support of its decision, the Appointing Authority provided a copy of Candidate Investigation Report showing that you lived at 253 Portland Road, Atlantic Highlands, N.J. from July 2005 to May 2010. Based on this information, the Appointing Authority indicates you did not maintain continuous residency in the City of Newark from the examination closing date of March 31, 2010, up to the date you were considered for appointment.

After a thorough review of our records and all the relevant material submitted, we find that there is not a sufficient basis to restore your name to the eligible list. Therefore, the Appointing Authority's decision to remove your name has been sustained and your appeal is denied.

In accordance with Merit System Rules, you may appeal this decision to the Division of Appeals and Regulatory Affairs (DARA) within 20 days of receipt of this letter. You must submit all proofs, arguments and issues which you plan to use to substantiate the issues raised in your appeal. Please submit a copy of this determination with your appeal to DARA. You must put all parties of interest on notice of your appeal and provide them with copies of all documents submitted for consideration.

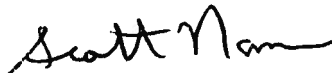
Dylan Maresca
February 7, 2014
Page 2

In accordance with Merit System Rules, you may appeal this decision to the Division of Appeals and Regulatory Affairs (DARA) within 20 days of receipt of this letter. You must submit all proofs, arguments and issues which you plan to use to substantiate the issues raised in your appeal. Please submit a copy of this determination with your appeal to DARA. You must put all parties of interest on notice of your appeal and provide them with copies of all documents submitted for consideration.

Please be advised that pursuant to P.L. 2010 C.26, effective July 1, 2010, there shall be a \$20 fee for appeals. Please include the required \$20 fee with your appeal. Payment must be made by check or money order only, payable to the NJ CSC. Persons receiving public assistance pursuant to P.L. 1947, C. 156 (C.44:8-107 et seq.), P.L. 1973, c.256 (C.44:7-85 et seq.), or P.L. 1997, c.38 (C.44:10-55 et seq.) and individuals with established veterans preference as defined by N.J.S.A. 11A:5-1 et seq. are exempt from these fees. Address all appeals to:

Henry Maurer, Director
Division of Appeals and Regulatory Affairs
Written Appeals Record Unit
PO Box 312
Trenton, NJ 08625-0312

Sincerely,
For the Director,



Scott Nance, Supervisor
Local Certifications

c: Julien X. Neals